



ATTORNEY GENERAL LESLIE RUTLEDGE

ARKANSASAG.GOV

GENERAL PROCEDURES FOR PROMULGATING A RULE

The following is a summary of the general procedural steps¹ to adopt, amend or repeal rules. Always check an agency's statutes for specific rule promulgation requirements applicable to that particular agency.²

1. Draft the proposed rule.
2. Unless the Governor grants an exemption, all state agencies must submit proposed rules (including proposed amendments to existing rules and proposed repeals of existing rules) to the Governor for approval. Instructions for doing so are provided in *Rule and Regulation Approval Process: Duties of Agencies, Departments, Boards, and Commissions*.³ The attached document, *Request for Governor's Approval of Proposed Rules and Regulations*,⁴ provides details on what must be included with the submission. Written gubernatorial approval must be obtained before the proposed rule is filed with Legislative Council (see #3 below). If the Governor determines that a proposed rule unnecessarily burdens business, the proposed rule shall not become effective nor shall it be filed with Legislative Council. Executive Order 15-02.
3. File the proposed rule with Legislative Council⁵ at least thirty (30) days before the end of the public comment period (described in paragraph 5). With the filing, include the following:⁶

¹ See also Appendix A, *Rule Adoption Checklist*.

² For example, Act 820 of 2017 prescribes rules promulgation requirements for the Board of Health regarding exemptions to the Prescription Drug Monitoring Program. Act 605 of 2017 adds additional steps to the existing rule-making requirements for the Dept. of Human Services to propose rules impacting state Medicaid costs.

³ See Appendix B.

⁴ See Appendix C.

⁵ If the legislature is in session, the proposed rule should be filed with the Joint Budget Committee instead of Legislative Council.

⁶ Act 1258 of 2015 removed the requirement to file proposed rules with the Bureau of Legislature Research. Instead, rules are to be filed with Legislative Council.

- A. A completed Questionnaire;⁷
- B. A Financial Impact Statement;⁸
- C. A summary of the proposed rule; and
- D. The proposed rule and any markup to the proposed rule (meaning, a markup of the original rule that shows the changes to be made).

Legislative Council will refer the proposed rule to the Administrative Rules and Regulations Subcommittee of the Legislative Council (“Rules Subcommittee”) for review. Ark. Code Ann. § 10-3-309.

4. The proposed rule, the public notice (described in paragraph 5), and the Financial Impact Statement must be filed electronically with the Secretary of State.⁹ Ark. Code Ann. §§ 25-15-218(c) and 25-15-204(e)(1)(A). Notice must be published by the Secretary of State on the Internet for thirty (30) days in accordance with Ark. Code Ann. § 25-15-204(a)(1)(D)(ii).
5. Begin the public comment period by publishing public notice of the terms or substance of the proposed rule or a description of the subjects and issues involved, along with the time, location and manner in which an interested person may present his or her views. The public comment period begins on the first day the public notice is published, and the comment period must continue for thirty (30) days. The public notice must be published as specified by law, or, if no method is specified, published in a newspaper of general daily circulation for three (3) consecutive days. The agency must give notice to all those specified by law and to all those who request advance notice of rulemaking. Notice must also be published, when appropriate, in trade, industry or professional publications selected by the agency. Ark. Code Ann. § 25-15-204(a)(1). Please see the statute for specific details regarding notice requirements.
6. Interested persons must be given reasonable opportunity to submit written data, views or arguments orally or in writing. Opportunity for an oral hearing shall be granted if requested by twenty-five (25) persons, by a governmental subdivision or agency, or by an association having at least twenty-five (25) members. The agency shall fully consider all written and oral submissions regarding the proposed rule before finalizing it. If an interested person requests a statement of the reasons for and against the adoption of a rule, either before the adoption or within thirty (30) days thereafter, the agency shall issue a concise statement of the principal reasons for and against the adoption, incorporating its reasons for overruling the considerations urged against the adoption of the rule. Ark. Code Ann. § 25-15-204(a)(2).

⁷ See Appendix D.

⁸ See Appendix E.

⁹ See Appendix F for a copy of the Secretary of State’s Filing Instructions.

7. The agency shall consider various factors prior to adoption. *See* Ark. Code Ann. § 25-15-204(a)(3) and (b). For example, the agency shall not adopt, amend or repeal a rule unless the rule is based on the best reasonably obtainable scientific, technical, economic or other evidence and information available concerning the need for, consequences of, and alternatives to the rule. Ark. Code Ann. § 25-15-204(b)(1).
8. Any significant changes to the proposed rule during the public comment period may require the agency to start the promulgation process over again. In general, changes to a rule during the process will not require a restart of the process if: (A) the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments arising from the proposed rule, or (B) the notice fairly apprised interested persons of the subject and issues that would be considered so the interested persons had an opportunity to comment. *See* Ark. Att’y Gen. Op. No. 97-358.
9. To have a rule placed on the Rules Subcommittee’s agenda, the public comment period of the proposed rule must have expired by the 15th of the month prior to the Rules Subcommittee meeting date at which the agency would like the proposed rule to appear on the agenda. The agency shall provide the Rules Subcommittee staff with the following information: (A) a public comment summary¹⁰ that includes for each comment received the name of the commenter, if known; a summary of the comment; and a response by the agency to the comment; (B) a revised markup of the proposed rule that shows changes, if any, that were made after the initial filing with the Rules Subcommittee; and (C) any additional information requested by Legislative Council.

When reviewing a rule, the Rules Subcommittee shall allow members of the public a reasonable opportunity to comment on the proposed rule. Upon conclusion of the review of the proposed rule by the Rules Subcommittee, the proposed rule shall be considered approved unless a majority of a quorum present requests a vote and a majority of the quorum present vote that the rule not be approved. A proposed rule approved by the Rules Subcommittee shall be considered approved by the Legislative Council upon adoption by the Legislative Council of the Rules Subcommittee’s report in which the rule is contained. The majority of a quorum present of the Legislative Council may also request a vote regarding the adoption of a proposed rule contained in the Rules Subcommittee’s report. If the Legislative Council votes on the issue of approving the proposed rule, the proposed rule shall be considered approved unless a majority of the quorum present vote that the rule not be approved. Whether a proposed rule is being reviewed by the Rules Subcommittee or the Legislative Council, the only grounds for not approving a proposed rule shall be that it is inconsistent with state law, federal law, or legislative intent. For more details, *see Rules of the Administrative Rules and*

¹⁰ *See* Appendix G.

*Regulations Subcommittee of Legislative Council Concerning Review and Approval of State Agency Rules.*¹¹

10. After the expiration of the thirty (30) day public comment period and before the effective date of the rule, the agency shall take appropriate measures to make the final rule known to persons who may be affected by the rule, including posting the following information on the agency's website: (A) the rule; (B) copies of written comments; (C) a summary of all comments and the agency's response; (D) a summary of the rule's financial impact; and (E) the proposed effective date. Ark. Code Ann. § 25-15-204(g)(1)(C).
11. Each state agency must file the adopted final rule with the Secretary of State electronically. Ark. Code Ann. § 25-15-218(c). An agency must also file one paper copy of a final rule, along with an Arkansas Register Transmittal Sheet.¹² An agency shall not file a final rule with the Secretary of State for adoption until the final rule has been approved by Legislative Council. Ark. Code Ann. § 25-15-204(f). The new adopted rule becomes effective **ten (10) days** after filing with the Secretary of State unless a later date is specified in the rule itself or by law. Ark. Code Ann. § 25-15-204(g)(1)(A).
12. The final rule, the Financial Impact Statement, and an Agency Certification Form must be filed with the Arkansas State Library. Ark. Code Ann. § 25-15-204(e)(1)(B). The State Library's current forms and instructions may be found online at:
http://www.asl.lib.ar.us/landing-page/details/rule_submissions
13. No rule is valid unless adopted and filed in substantial compliance with Ark. Code Ann. § 25-15-204. Ark. Code Ann. § 25-15-204(h).
14. There are special provisions for adoption of emergency rules. If an agency finds that imminent peril to the public health, safety, or welfare, or that compliance with a federal law or regulations, requires adoption of a rule on less than thirty (30) days' notice, and if the agency states in writing its reasons for that finding, the agency may proceed to adopt an emergency rule without prior notice or hearing or with an abbreviated notice and hearing. Ark. Code Ann. § 25-15-204(c).

An agency shall not file an emergency rule with the Secretary of State for adoption until the emergency rule has been approved by the Executive Subcommittee of the Legislative Council ("Executive Subcommittee"). Ark. Code Ann. § 25-15-204(c)(2). See Ark. Code Ann. § 10-3-309(d) and *Rules of the Administrative Rules and Regulations Subcommittee of Legislative Council Concerning Review and Approval of State Agency Rules* for further details on the filing and approval process before the Executive Subcommittee. After receiving Executive Subcommittee approval, the agency must file the emergency rule with

¹¹ See Appendix H for 2017 version.

¹² See Appendix I.

the Secretary of State, the Arkansas State Library, and the Legislative Council if the rule is going to be permanently promulgated. Ark. Code Ann. § 25-15-204(e)(1). An emergency rule may become effective immediately upon filing with the Secretary of State or at a stated time less than ten (10) days after filing if the agency finds that such effective date is necessary due to imminent peril to the public health, safety, or welfare. The agency must file its finding, a brief statement of the reasons for the finding, and the Financial Impact Statement along with the rule. The agency must take appropriate measures to make the emergency rules known to those who may be affected. Ark. Code Ann. § 25-15-204(g)(2).

An emergency rule is effective for no more than 120 days, except for emergency rules promulgated by the Health Department regarding the classification of controlled substances. Ark. Code Ann. § 25-15-204(c)(3). Once an emergency rule expires, if the agency wishes to adopt a successive emergency rule that is identical or substantially similar to the emergency rule that just expired, the agency must wait until thirty (30) days after the initial emergency rule expires before adopting the successive emergency rule. Ark. Code Ann. § 25-15-204(c)(4). If the agency intends for the emergency rule to become a permanent rule, it must comply with the formal promulgation process.

For additional information, please see the appropriate statutes or contact the Bureau of Legislative Research or your agency's attorney.

APPENDIX A

RULE ADOPTION CHECKLIST

<u>TASK</u>	<u>DATE COMPLETED</u>
1. Board or Agency Adopts Proposed Rule	_____
2. Prepare Forms <ul style="list-style-type: none"><input type="checkbox"/> Questionnaire<input type="checkbox"/> Financial Impact Statement<input type="checkbox"/> Proposed Rule – clean copy<input type="checkbox"/> Proposed Rule – markup<input type="checkbox"/> Summary of proposed rule<input type="checkbox"/> Public Notice	_____
3. Submit to Governor’s Office for Approval <ul style="list-style-type: none"><input type="checkbox"/> Request for Governor’s Approval Form<input type="checkbox"/> Questionnaire<input type="checkbox"/> Financial Impact Statement<input type="checkbox"/> Proposed Rule – clean copy<input type="checkbox"/> Proposed Rule – markup<input type="checkbox"/> Copy of law, if rule is required by law	_____
4. Written Approval Received from Governor’s Office	_____
5. File with Legislative Council <p>DEADLINE: File at least 30 days prior to end of public comment period</p> <ul style="list-style-type: none"><input type="checkbox"/> Questionnaire<input type="checkbox"/> Summary<input type="checkbox"/> Proposed Rule – clean copy<input type="checkbox"/> Proposed Rule – markup<input type="checkbox"/> Financial Impact Statement	_____
6. File with Secretary of State in Electronic Format <p>DEADLINE: File at least 30 days prior to end of public comment period</p> <ul style="list-style-type: none"><input type="checkbox"/> Public Notice<input type="checkbox"/> Proposed Rule – markup, if rule is an amendment<input type="checkbox"/> Proposed Rule – clean copy, if rule is new<input type="checkbox"/> Financial Impact Statement	_____

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7. **Publish Public Notice in Newspaper of General Daily Circulation (i.e., Democrat-Gazette) for 3 Consecutive Days** _____
Public comment period begins on 1st day of publication
8. **Post on Agency Website** _____
 Public Notice
 Proposed Rule – clean
 Proposed Rule – markup
9. **Give Notice to Interested Persons** _____
 Those specified by law
 Those who have requested notice
 Trade publications
10. **Board or Agency Adopts Final Rule** _____
 Must fully consider all comments
 Proposed Rule must be based on best reasonably obtainable information concerning the need for, consequences of, and alternatives to, the proposed rule
 Must consider additional factors:
 - Whether the proposed rule is required by law
 - Other relevant statutes
 - Nature and significance of the problem the agency seeks to address with the proposed rule
 - Whether existing rules have contributed to the problem the agency is trying to solve
 - Reasonable alternatives to the proposed rule
 - Financial Impact
11. **Submit to Legislative Council** _____
DEADLINE: Must file by the 15th day of the month prior to the month the agency wants the Subcommittee to hear the proposed rule
 Public comment summary
 Revised markup with any new changes
12. **Post on Agency Website** _____
DEADLINE: After public comment and before effective date
 Final rule
 Copies of all written comments
 Summary of all written and oral comments and the agency response

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- Summary of the financial impact
- Proposed effective date

13. File Final Rule with Secretary of State _____

EFFECTIVE DATE: Final rule is effective 10 days after filing, unless the rule contains a later effective date

- Arkansas Register Transmittal Sheet
- Electronic copy of final rule
- Paper copy of final rule

14. File with State Library _____

- Agency Certification Form
- Final Rule – clean copy
- Financial Impact Statement

APPENDIX B

Rule and Regulation Approval Process

Duties of Agencies, Departments, Boards, and Commissions

1. The Agency alerts its Governor's Office Liaison (the "Liaison") that it or its Board is drafting a rule or regulation for promulgation. The Agency gives the Liaison the approximate date of submission to Governor's office as well as the proposed effective date. The Agency should consult with its attorney whether its proposal meets the definition of "rule" under the Administrative Procedure Act (the "APA"), which is codified at Arkansas Code Annotated section 25-15-201 *et. seq.*
2. The Agency submits the proposed rule to its Liaison with the requisite documents as set forth on the Request Form for Governor's Approval.
 - a. The Agency should not set a date for public comment or legislative hearing until the Governor's office notifies the Agency that the Governor has approved the rule for the promulgation process.
 - b. The time schedule for the approval by the Governor is not set in stone, so it is important for the Agencies to not move forward with the promulgation process until the Governor approves the rule for promulgation.
3. Governor's office conducts review of proposed rule.
 - a. If the Governor approves the rule for promulgation, then the agency may move forward with the process.
 - b. If the Governor does not approve the rule, then the agency must redraft the regulation and begin the process from the beginning.
4. After receiving the Governor's approval, the agency then moves forward with the process as set forth under the APA.
 - a. If the agency makes any substantive changes during the APA process, then the agency must resubmit the rule to the Governor's office for approval process with the promulgation of the rule.
 - b. If the agency moves forward with a substantive change without the Governor's approval, then the Legislature will be notified of such issue, and the rule will be pulled from the subcommittee's agenda.
 - c. If the agency is not certain whether it made a substantive change, then it should confer with its legal counsel or the Attorney General's office.
5. Please note that emergencies do occur with regard to the rule promulgation process. If an Agency is facing an emergency, then the Governor may grant an exception to this process upon request from the Agency.

APPENDIX C

Request for Governor's Approval of Proposed Rules and Regulations

Department/Agency: _____

Short Title of Rule: _____

New Rule: Yes No

Amendment to Existing Rule: Yes No

State Mandate: Yes No

Federal Mandate: Yes No

If yes, please provide the rule, regulation, and/or statute citation:

Authority to Promulgate the Rule: _____

Proposed Effective Date: _____

Emergency Rule: Yes No

Expedited Rule Requested: Yes No

Summary of Proposed New Rule or Proposed Amendment to Existing Rule:

Financial Impact: Yes No Unknown; **If yes or unknown, please explain:**

Public Hearing: Yes No

Controversial: Yes No

Documents Required for Approval Process

Please note that the Governor's office will not begin the approval process if any of the following applicable documents are not enclosed with the approval request.

- BLR Questionnaire
- BLR Financial Impact Statement
- Proposed Rule – clean version
- Mark-Up of Rule, if amended from previous version
- Copy of Act or Regulation, if Rule is pursuant to State or Federal mandate

APPENDIX D

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY _____

DIVISION _____

DIVISION DIRECTOR _____

CONTACT PERSON _____

ADDRESS _____

PHONE NO. _____ FAX NO. _____ E-MAIL _____

NAME OF PRESENTER AT COMMITTEE MEETING _____

PRESENTER E-MAIL _____

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis
 Administrative Rules Review Section
 Arkansas Legislative Council
 Bureau of Legislative Research
 One Capitol Mall, 5th Floor
 Little Rock, AR 72201**

1. What is the short title of this rule? _____

2. What is the subject of the proposed rule? _____

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
 If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
 If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

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5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. _____

7. What is the purpose of this proposed rule? Why is it necessary? _____

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). _____

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

12. Do you expect this rule to be controversial? Yes No

If yes, please explain. _____

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

APPENDIX E

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____

DIVISION _____

PERSON COMPLETING THIS STATEMENT _____

TELEPHONE NO. _____ **FAX NO.** _____ **EMAIL:** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE _____

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

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Total _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

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- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



ARKANSAS SECRETARY OF STATE

MARK MARTIN

Dear State Agency, Board or Commission,

Arkansas Code Annotated 25-15-218 requires state agencies, boards and commissions to file “its **adopted** rules, **proposed** rules, and **notices** with the Secretary of State in an electronic format acceptable to the Secretary of State and for those filings to appear on the Secretary of State’s website.” The appearance of the various stages of rulemaking on the website gives members of the public more access to agency rules that affect them. All agency rule notices, proposed rules, emergency rules, and adopted rules must be submitted in an electronic format with the *Arkansas Register*.

Arkansas Code 25-15-218 requirements:

- **Rule Notices** – Rule notices will be required to be published in a newspaper of general daily circulation for three consecutive days. These rule notices should also be emailed to register@sos.arkansas.gov listing a *date* of when the notice will appear in the newspaper. The notice will be posted on the Secretary of State’s website.
- **Proposed Rules** -- Proposed rules should also be emailed to register@sos.arkansas.gov. Proposed rules should be submitted in “mark-up” (strikethrough, underline, etc.) form if the rule is an amendment to an existing rule. For a new rule a “clean copy” should be submitted.
- **Final and Emergency Rules** – Electronic copies and paper copies of the rules must be filed with the Arkansas Register. Electronic copies should be emailed to register@sos.arkansas.gov. Paper copies of the rule need to be filed and date stamped with the office and will be used as the “official copy.” Paper copies need to include an Arkansas Register Transmittal Sheet. This cover sheet can be obtained from the Rules & Regulations section of the Secretary of States’ website at: <http://www.sos.arkansas.gov/rulesRegs/Pages/default.aspx>. Final rules will become effective 10 days after filing (Act 1258 of 2015), unless a later date is specified in the rule.

All emailed electronic files should be submitted using Adobe PDF or Microsoft Word. Also, a contact name and which agency is filing the rules should be included.

Please share this information with all staff in your agency who file regulations with the *Arkansas Register*. Thank you for your help in making your agencies information more accessible to the citizens of Arkansas.

Sincerely,

Amy Jo Walters

Administrative Rules Coordinator

(501) 682-3448

register@sos.arkansas.gov

[Name of Proposed Rule]

Summary of Public Comments

[Please fill out the below information for each comment (oral or written) received by the agency.]

1. Commenter's Name: _____

Commenter's Business/Agency: _____

Summary of Comment:

Agency's response to Comment:

Were any changes made to the Proposed Rule as a result of this Comment? If so, please describe.

2. Commenter's Name: _____

Commenter's Business/Agency: _____

Summary of Comment:

Agency's response to Comment:

Were any changes made to the Proposed Rule as a result of this Comment? If so, please describe.

APPENDIX H

**RULES OF THE ADMINISTRATIVE RULES AND REGULATIONS
SUBCOMMITTEE OF LEGISLATIVE COUNCIL**

CONCERNING REVIEW AND APPROVAL OF STATE AGENCY RULES

Review and Approval of State Agency Rules. In accordance with Arkansas Code § 10-3-309, the following procedures shall apply with regard to review and approval of state agency rules:

(a) As used in these rules:

(1)(A) “Rule” means a state agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice of a state agency and includes without limitation the amendment or repeal of a prior rule.

(B) “Rule” does not mean:

(i) A statement that concerns the internal management of a state agency and that does not affect the private rights or procedures available to the public;

(ii) A declaratory order or ruling issued under § 25-15-206 or other provision of law applicable to the state agency issuing the declaratory order or ruling; or

(iii) Intraagency memoranda; and

(2)(A) “State agency” means an office, board, commission, department, council, bureau, or other agency of state government having authority to promulgate or enforce rules.

(B) “State agency does not include the following:

(i) The Arkansas State Game and Fish Commission, if the rule is not promulgated under the authority of a statute enacted by the General Assembly;

(ii) The State Highway Commission and the Arkansas State Highway and Transportation Department, if the rule is not promulgated under authority of a statute enacted by the General Assembly; and

(iii) An institution of higher education.

(b) A state agency shall file a proposed rule with the Legislative Council at least thirty (30) days before the expiration of the period for public comment on the rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., or other laws or policies pertaining to the rulemaking authority of that state agency.

(c) The Legislative Council shall refer all proposed rules filed by a state agency with the Administrative Rules and Regulations Subcommittee.

(d) **Review and Approval of Rules by the Administrative Rules and Regulations Subcommittee.** The Administrative Rules and Regulations Subcommittee (the “Subcommittee”) shall conduct its review of state agency rules as follows:

(1) **Placement of Rules on the Subcommittee Agenda.** In order to have a rule placed on an upcoming Subcommittee agenda, the following requirements must be met:

(A) The public comment period of the state agency’s proposed rule shall have expired by the 15th of the month prior to the Subcommittee meeting date at

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which the state agency would like the proposed rule to appear on the agenda; and

(B) The state agency shall provide the Subcommittee staff with the following information, which is in addition to the information previously required to have been submitted under subsection (d)(2) of this Rule:

(i) A public comment summary that includes for each comment received: the name of the commenter, if known; a summary of the comment; and a response by the agency to the comment;

(ii) A revised markup of the proposed rule that shows changes, if any, that were made subsequent to the initial rule filing with the Subcommittee; and

(iii) Any additional information requested by the Legislative Council, including without limitation the state agency's responses to any questions and comments submitted to the state agency by Subcommittee staff concerning the proposed rule.

(2) Materials to be Provided by a State Agency When Filing a Rule. Upon filing of a proposed rule with the Subcommittee, the state agency shall submit the following documentation:

(A) A completed questionnaire on a form approved by the Legislative Council;

(B) A financial impact statement, as required by Arkansas Code § 25-15-204, on a form approved by the Legislative Council;

(C) A summary of the proposed rule; and

(D) The proposed rule and any markup to the proposed rule.

(3) Public Comment. When conducting its review of a state agency rule, the Subcommittee shall allow members of the public a reasonable opportunity to comment on the proposed rule.

(4)(A) Review and Approval. Except as set forth in subsection (d)(4)(F) of this Rule, upon conclusion of its review of the proposed rule, the Chair of the Subcommittee shall state, "Without objection, the rule is considered reviewed and approved."

(B) At this point, the rule is considered reviewed and approved, pending Legislative Council final action, unless a majority of a quorum present at the Subcommittee meeting request that the Subcommittee vote on the issue of approving the rule.

(C)(i) At the time that the motion is made to vote regarding approval, the member making the motion shall state the grounds upon which approval should be denied.

(ii) The only viable grounds for not approving a rule shall be if the rule is found to be inconsistent with state or federal law or with legislative intent.

(D) If the Subcommittee votes on the issue of approving the proposed rule, the proposed rule shall be considered approved unless a majority of a quorum present vote for the rule to not be approved.

(E)(i) The Subcommittee shall not exercise line-item review and approval of a proposed rule. Review and approval of the proposed rule shall apply to the entire proposed rule as submitted by the state agency.

(ii) If a state agency presenting a proposed rule to the Subcommittee indicates its intent or agreement to revise a proposed rule in response to

APPENDIX H

discussions by the Subcommittee, and revision of the rule in such a manner would not violate any of the requirements of the Administrative Procedure Act, the Subcommittee may review and approve the proposed rule with the revisions agreed to by the state agency.

(F)(i) [Effective July 31, 2017] A proposed rule submitted by the State Board of Health under Arkansas Code § 20-7-604(d)(2)(D), concerning exemptions from the requirements of the Prescription Drug Monitoring Program, shall be considered reviewed and approved by the Subcommittee upon an affirmative vote of three-fourths (3/4) of the members present when a quorum is present.

(ii) When considering a rule submitted under this subsection (d)(4)(F), the requirement to state the grounds for not approving a rule under subsection (d)(4)(C) shall not apply.

(5)(A)(i) **Referral of Proposed Rules.** The Subcommittee may refer a rule to a committee of the General Assembly or another subcommittee of the Legislative Council for the committee's or subcommittee's consideration.

(ii) However, in doing so, the Subcommittee shall not delegate its authority to review and approve a rule to that committee or subcommittee.

(B) After the referred rule is presented to a committee of the General Assembly or subcommittee of the Legislative Council and considered, the committee or subcommittee to whom the rule was referred may provide its views and opinions on the rule to the Subcommittee.

(C) Either chair of the Subcommittee may determine that there is an undue delay in the review of the proposed rule by the committee or subcommittee to which it was referred and recall the proposed rule in order to begin the review and approval process by the Subcommittee.

(6)(A) **Statutory Requirement for Review by a Specific Subject Matter Committee.** If a statute requires a proposed rule to be reviewed or considered by a specific subject matter committee or subcommittee, the subject matter committee or subcommittee shall consider the proposed rule before the Subcommittee undertakes review and approval of the proposed rule.

(B)(i) Either chair of the Subcommittee may waive the requirement of subsection (d)(6)(A) if he or she determines that prior review by the subject matter committee or subcommittee will or has already resulted in an undue delay in the review and approval process.

(ii) A waiver shall not be granted if the state agency has not provided the required information under subsection (d)(1)(B) of this Rule.

(iii) Issuance of a waiver by either chair of the Subcommittee does not remove the statutory requirement of review or consideration by the subject matter committee or subcommittee, and the state agency shall still comply with all statutory requirements regarding review by legislative committees.

(e) **Review and Approval of Rules by the Legislative Council.**

(1) The Legislative Council shall conduct its approval of rules reviewed and approved by the Administrative Rules and Regulations Subcommittee in the following manner:

(A) A proposed rule approved by the Administrative Rules and Regulations Subcommittee shall be considered approved by the Legislative Council upon adoption by the Legislative Council of the Subcommittee's report in which the rule

APPENDIX H

is contained.

(B)(i) A majority of a quorum present of the Legislative Council may request a vote regarding approval of a specific proposed rule contained in the report of the Subcommittee. If the Legislative Council votes on the issue of approving the proposed rule, the proposed rule shall be approved unless a majority of a quorum present vote for the proposed rule to not be approved.

(ii)(a) At the time that the motion is made to vote regarding approval, the member making the motion shall state the grounds upon which approval should be denied.

(b) The only viable grounds for not approving a rule shall be if the rule is found to be inconsistent with state or federal law or with legislative intent.

(2)(A) [Effective July 31, 2017] A proposed rule submitted by the State Board of Health under Arkansas Code § 20-7-604(d)(2)(D), concerning exemptions from the requirements of the Prescription Drug Monitoring Program, shall be considered reviewed and approved by the Legislative Council upon an affirmative vote of three-fourths (3/4) of the members present when a quorum is present, and shall be considered separately from other rules reported to the Legislative Council by the Administrative Rules and Regulations Subcommittee.

(B) When considering review and approval of a proposed rule under subsection (e)(2) of this Rule, grounds for not approving the rule are not required to be stated.

(f) **Review and Approval of Emergency Rules.** The following procedures apply with regard to the review and approval of proposed emergency rules:

(1) A state agency shall file a proposed emergency rule with the Executive Subcommittee of the Legislative Council.

(2) A proposed emergency rule may be considered reviewed and approved by the Executive Subcommittee in one of two ways:

(A)(i) The proposed emergency rule is reviewed and approved at a meeting of the Executive Subcommittee.

(ii) Upon conclusion of the Executive Subcommittee's review of the proposed emergency rule, the rule shall be considered approved unless a majority of a quorum present request a vote regarding approval of the proposed emergency rule. If the Executive Subcommittee votes on the issue of approval, the proposed emergency rule shall be approved unless a majority of a quorum present vote for the proposed emergency rule not to be approved.

(iii)(a) At the time that the motion is made to vote regarding approval, the member making the motion shall state the grounds upon which approval should be denied.

(b) The only viable grounds for not approving a rule shall be if the rule is found to be inconsistent with state or federal law or legislative intent.

(B) A majority or more of the members of the Executive Subcommittee approve the proposed emergency rule in writing.

(3)(A) If possible, the proposed emergency rule shall be sent electronically to the members of the Legislative Council at least one (1) day before the Executive Subcommittee considers the emergency rule for review and approval.

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(B) Either chair of the Legislative Council or a majority of the members of Legislative Council may call a meeting to be held within one (1) day after review and approval by the Executive Subcommittee of the emergency rule to request reconsideration of the emergency rule by the Executive Subcommittee.

(4) A proposed emergency rule approved by the Executive Subcommittee shall be reported to the Administrative Rules and Regulations Subcommittee and to the Legislative Council.

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State
Mark Martin

500 Woodlane, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency _____

Department _____

Contact _____ E-mail _____ Phone _____

Statutory Authority for Promulgating Rules _____

Rule Title: _____

Intended Effective Date
(Check One)

Date

- | | | |
|--|---------------------------------------|-------|
| <input type="checkbox"/> Emergency (ACA 25-15-204) | Legal Notice Published | _____ |
| <input type="checkbox"/> 10 Days After Filing (ACA 25-15-204) | Final Date for Public Comment | _____ |
| <input type="checkbox"/> Other _____
(Must be more than 10 days after filing date.) | Reviewed by Legislative Council | _____ |
| | Adopted by State Agency | _____ |

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

Phone Number

E-mail Address

Title

Date

APPENDIX J

Stricken language would be deleted from and underlined language would be added to present law.
Act 781 of the Regular Session

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: H3/14/17

A Bill

HOUSE BILL 1880

5 By: Representative Dotson
6 By: Senator E. Williams
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH A SUNSET DATE FOR STATE AGENCY
10 RULES; TO ESTABLISH A PROCESS FOR A STATE AGENCY RULE
11 TO EXIST BEYOND THE SUNSET DATE; AND FOR OTHER
12 PURPOSES.
13
14

Subtitle

15 TO ESTABLISH A SUNSET DATE FOR STATE
16 AGENCY RULES; AND TO ESTABLISH A PROCESS
17 FOR A STATE AGENCY RULE TO EXIST BEYOND
18 THE SUNSET DATE.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 *SECTION 1. DO NOT CODIFY. Legislative findings and determinations.*
25 *The General Assembly finds and determines that it is in the best*
26 *interest of this state to conduct a periodic comprehensive consideration of*
27 *agency rules.*
28

29 *SECTION 2. Arkansas Code Title 25, Chapter 15, is amended to add an*
30 *additional subchapter to read as follows:*

31 *Subchapter 4 – Rule Report, Sunset, and Extension*
32

33 *25-15-401. Definitions.*

34 *As used in this subchapter:*

35 *(1)(A) “Agency” means a board, commission, department, office, or*
36 *other authority of the government of the State of Arkansas, whether within or*



APPENDIX J

1 subject to review by another agency except the General Assembly, the courts,
2 and the Governor.

3 (B) "Agency" includes the Division of Child Care and Early
4 Childhood Education of the Department of Human Services and the Child Care
5 Appeal Review Panel for purposes of administrative appeal;

6 (2)(A) "Rule" means an agency statement of general applicability and
7 future effect that implements, interprets, or prescribes law or policy or
8 describes the organization, procedure, or practice of an agency, including
9 without limitation the amendment or repeal of a prior rule.

10 (B) "Rule" does not mean:

11 (i) A statement that concerns the internal management of
12 an agency and that does not affect the private rights or procedures available
13 to the public;

14 (ii) A declaratory ruling issued under § 25-15-206; or

15 (iii) Intra-agency memoranda; and

16 (3) "Rule making" means an agency process for the formulation,
17 amendment, or repeal of a rule.

18
19 25-15-402. Report, sunset, and extension of rules.

20 (a)(1) Except as provided in § 25-15-403 and under subdivision (a)(2)
21 of this section, unless a rule is extended by the Governor and the
22 Legislative Council, an agency rule shall maintain in full force and effect
23 for no more than twenty-four (24) years.

24 (2) However, this section does not prohibit an agency from
25 proposing, amending, or repealing a rule in an ordinary fashion under the
26 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

27 (b)(1) By December 1, 2017, each agency shall file an initial rule
28 report with the Governor and the Legislative Council.

29 (2)(A) The initial rule report shall contain a list of all the
30 rules in effect promulgated by the agency.

31 (B) The list of rules under subdivision (c)(2)(A) of this
32 section shall include:

33 (i) The initial effective date of each rule;

34 (ii) The date that each rule was filed with the
35 Secretary of State;

36 (iii) The authority under which the rule was

1 promulgated; and

2 (iv) If the rule is required under state or federal
3 law, a statement regarding the requirement.

4 (c)(1) By July 1, 2018, each agency shall file a final rule report and
5 shall continue to file a rule report according to the schedule determined
6 under § 25-15-403.

7 (2)(A) The final rule report shall contain:

8 (i) A list of all rules in effect that distinguishes
9 between rules that the agency will continue to enforce and rules that the
10 agency wishes to repeal; and

11 (ii) The date that the agency filed its initial rule
12 report under subdivision (b)(1)(A) of this section.

13 (B) The agency shall provide in writing the legal
14 authority or agency justification for each rule that will continue to be
15 enforced by the agency.

16 (C)(i) If the agency chooses to repeal a rule, the agency
17 shall provide in writing the agency justification for repealing the rule.

18 (ii) A rule that an agency chooses to repeal under
19 subdivision (a)(2)(C)(i) of this section is not subject to the Arkansas
20 Administrative Procedure Act, § 25-15-201 et seq.

21 (3) The final rule report shall be assigned to the subject
22 matter interim committees by the President Pro Tempore of the Senate and the
23 Speaker of the House of Representatives.

24 (d) By December 31, 2018, each of the subject matter interim
25 committees shall:

26 (1) Consider the rules the agency wishes to repeal and the
27 corresponding justifications submitted by the agency under subdivision
28 (c)(2)(C) of this section;

29 (2) Consider the agency rules that will continue to be enforced
30 by the agency and the corresponding justification submitted by the agency
31 under subdivision (c)(2)(B) of this section;

32 (3) Allow an agency representative and the public to speak about
33 the rules at an interim committee meeting;

34 (4) Recommend that the Legislative Council either accept or
35 reject the agency's decision to repeal a rule; and

36 (5) Refer the agency rules that will continue to be enforced by

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As Engrossed: H3/14/17

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1 the agency to group consideration under § 25-15-403.

2 (e)(1) Before December 31 of the fourth year of the consideration of a
3 group of agencies under § 25-15-403, the Legislative Council shall meet on a
4 date or dates set by the President Pro Tempore of the Senate and the Speaker
5 of the House of Representatives to consider renewing the rules of the
6 agencies scheduled for consideration.

7 (2) If the Legislative Council does not extend an agency's rules
8 and the result is that the agency has no rules that address an issue that the
9 agency is required by law to address by rule, the agency has sixty (60) days
10 to initiate the rule-making process under the Arkansas Administrative
11 Procedure Act, § 25-15-201 et seq., including without limitation adoption of
12 an emergency rule.

13 (f)(1) If applicable, a final rule report under this section shall be
14 updated by the agency to include and make note of any rule filed, amended, or
15 repealed by the agency during the interim period of time occurring after July
16 1, 2018, and before it is sent to a group under § 25-15-403.

17 (2) An updated final rule report shall include the date the rule
18 was filed, amended, or repealed during the interim.

19
20 25-15-403. Order of implementation.

21 (a)(1) The agency rules shall be divided in six (6) groups to be
22 determined by the Governor to ensure that the number of agencies in each
23 group and the number of subject matter areas represented by each group are
24 approximately equal.

25 (2) If the Governor has not determined the groups by January 1,
26 2019, the President Pro Tempore of the Senate and the Speaker of the House of
27 Representatives shall determine the six (6) groups to ensure that the number
28 of agencies in each group and the number of subject-matter areas represented
29 by each group are approximately equal.

30 (3) If neither the Governor nor the President Pro Tempore of the
31 Senate and the Speaker of the House of Representatives have determined the
32 groups by April 1, 2019, all of the state agencies shall be subject to
33 immediate evaluation in one (1) group and:

34 (A) Except as provided in § 25-15-402 concerning an
35 initial rule report, a final rule report shall be filed by an agency:

36 (i) No earlier than May 1, 2019, and no later than

1 July 1, 2019; and

2 (ii) No earlier than May 1 of every twenty-fourth
3 year after May 1, 2019, and no later than July 1 of every twenty-fourth year
4 after July 1, 2019; and

5 (B) The evaluation shall be completed no later than:

6 (i) December 31, 2042; and

7 (ii) December 31 of every twenty-fourth year after
8 December 31, 2042.

9 (b)(1) Each group of agencies assigned under subdivision (a)(1) or
10 subdivision (a)(2) of this section shall be evaluated in a four-year time
11 period.

12 (2) Group 1 shall file a report:

13 (A) No earlier than May 1, 2019, and no later than July 1,
14 2019; and

15 (B) No earlier than May 1 of every twenty-fourth year
16 after May 1, 2019, and no later than July 1 of every twenty-fourth year after
17 July 1, 2019.

18 (3) Group 2 shall file a report:

19 (A) No earlier than May 1, 2023, and no later than July 1,
20 2023; and

21 (B) No earlier than May 1 of every twenty-fourth year
22 after May 1, 2023, and no later than July 1 of every twenty-fourth year after
23 July 1, 2023.

24 (4) Group 3 shall file a report:

25 (A) No earlier than May 1, 2027, and no later than July 1,
26 2027; and

27 (B) No earlier than May 1 of every twenty-fourth year
28 after May 1, 2027, and no later than January 1 of every twenty-fourth year
29 after July 1, 2027.

30 (5) Group 4 shall file a report:

31 (A) No earlier than May 1, 2031, and no later than July 1,
32 2031; and

33 (B) No earlier than May 1 of every twenty-fourth year
34 after May 1, 2031, and no later than July 1 of every twenty-fourth year after
35 July 1, 2031.

36 (6) Group 5 shall file a report:

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1 (A) No earlier than May 1, 2035, and no later than July 1,
2 2035; and

3 (B) No earlier than May 1 of every twenty-fourth year
4 after May 1, 2035, and no later than July 1 of every twenty-fourth year after
5 July 1, 2035.

6 (7) Group 6 shall file a report:

7 (A) No earlier than May 1, 2039, and no later than July 1,
8 2039; and

9 (B) No earlier than May 1 of every twenty-fourth year
10 after May 1, 2039, and no later than January 1 of every twenty-fourth year
11 after July 1, 2039.

12 (c) Agency rules that have been in effect for twenty-four (24) years
13 or longer on the enactment date of this act shall remain in effect until the
14 date of their first scheduled evaluation as provided under this section
15 unless otherwise approved or rejected in accordance with the Arkansas
16 Administrative Procedure Act, § 25-15-201 et seq.

17
18
19 /s/Dotson

20
21
22 **APPROVED: 03/31/2017**



STATE OF ARKANSAS
ASA HUTCHINSON
GOVERNOR

MEMORANDUM

TO: Directors of State Agencies, Offices, and Departments

FROM: Governor Asa Hutchinson

CC: Leslie Rutledge, Attorney General of Arkansas
Marty Garrity, Director, Bureau of Legislative Research

DATE: June 1, 2017

SUBJECT: Rules and Regulation Review Process Initial Submission Report

The 91st General Assembly passed Act 781 of 2017 (the "Act"), which requires all state agencies to file a rule report with my office and the Legislative Council. By December 1, 2017, each agency shall file an initial rule report, which contains a list of all the rules promulgated by the agency, which are in effect and not repealed. The Act does not prohibit an agency from proposing, amending, or repealing a rule in the ordinary fashion under the Arkansas Administrative Procedures Act ("APA"). The purpose of this memorandum is to set forth the process that all state agencies should undertake in order to comply with the Act, which is different from the current process under the APA and Executive Order 15-02.

For most agencies, this process will take a significant amount of time to complete. However, I expect all agencies to use current staff to complete this process. Although this will be additional work for the agency staff, if all agencies begin the review process immediately, there is more than enough time to complete this project by the required deadline. In addition, my goal is to streamline the submission process, which is my objective in working with the staff at the Bureau of Legislative Research ("BLR").

BLR has developed an online survey program through which all rule reports will be submitted. All agencies must submit the required rule report on this online program, which will be distributed to both the Legislative Council and my office. BLR is the point of contact for this online program, and your respective agency liaison in my office will be available to assist as well. My office will have the capability to review all of the rules as

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they are being submitted. It is my understanding that the online program will be available within the next couple of weeks. BLR will send additional guidance to all agencies, which addresses the submission process and how agencies access the online program.

This is an important opportunity to repeal outdated regulations by bringing all of them up to date. If you have any questions about the submission process of the rule report, please contact my office as it will initially coordinate the administration's submissions to the General Assembly. Moreover, if you have any technical questions about the online program, please contact the staff at BLR. As always, if you have any questions about the current rule process pursuant to the APA and Executive Order 15-02, feel free to contact my office or, if applicable, your respective agency attorney at the Office of the Attorney General.

A handwritten signature in black ink, appearing to read "Asa Hutchinson", written over a horizontal line.

Asa Hutchinson
Governor

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule? _____

- 2. What is the subject of the proposed rule? _____

- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____

- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes No
If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

- Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?
Yes No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. _____

7. What is the purpose of this proposed rule? Why is it necessary? _____

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). _____

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. _____

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____

DIVISION _____

PERSON COMPLETING THIS STATEMENT _____

TELEPHONE _____ **FAX** _____ **EMAIL:** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE _____

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.